



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2004

Mr. Gordon Hikel  
Attorney at Law  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2004-7377

Dear Mr. Hikel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208314.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to two specified individuals and addresses. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy. Information must be withheld under the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, we note that the right of privacy is purely personal and lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM- 229

(1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). In this instance, the requestor partly seeks unspecified investigative records in which a specified individual who is alive is identified. Thus, the request requires the city to compile information relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates this individual's right to privacy to the extent that it includes investigations where he was a suspect, arrestee, or defendant. Accordingly, we conclude that to the extent that the city maintains responsive information that reveals that he was a suspect, arrestee, or defendant, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy on the basis of *Reporters*.

You claim that some of the requested information is excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information pertains to criminal matters that are still pending and cases that have been filed or will soon be filed with the Denton County District Attorney's Office. Based on your representations and our review of the submitted information, we find that the release of some of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Thus, we agree that section 552.108(a)(1) is applicable to this information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chron. Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, to include detailed description of offense). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the town may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the city maintains the discretion to release all or part of this particular information that is not otherwise confidential by law.<sup>1</sup> *See* Gov't Code § 552.007.

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<sup>1</sup> Because we base our ruling with regard to this particular information on section 552.108(a)(1) of the Government Code, we need not address the applicability of your remaining claimed exceptions to disclosure, except to note that "basic information" generally may not be withheld under section 552.103 of the Government Code. *See* Open Records Decision Nos. 597 (1991), 362 (1983).

In summary, to the extent that the city maintains responsive information that reveals that one of the specified individuals was a suspect, arrestee, or defendant, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. With the exception of basic information that must be released, the city may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. Bounds". The signature is fluid and cursive, with the first name "Ronald" and last name "Bounds" clearly distinguishable.

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 208314

Enc. Marked documents

c: Ms. Jennifer E. Williamson  
2535 Marsh Lane, #1208  
Carrollton, Texas 75006  
(w/o enclosures)